Supreme Court, U.S.
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83-1717

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

ALABAMA SURFACE MINING RECLAMATION COMMISSION,

Petitioner

V.

COMMERCIAL STANDARD INSURANCE COMPANY,

Respondent

PETITION FOR A WRIT OF CERTIORARI

TO ALABAMA SUPREME COURT

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ALABAMA

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PETITIONER

QUESTIONS PRESENTED

1. Is the Alabama Courts' decision in this case so unusual and improper as to unnecessarily obstruct the purpose of federal law, to "protect the society and the environment from the adverse effects of surface coal mining operations"? 30 U.S.C. §1202(a).

2. Does the Alabama Courts' decision violate federal law in its restrictive interpretation of the statute in question?

a. Should the failure to timely commence one verified complaint proceeding for one particular violation against a surface coal mine operator operate to relieve the operator and his surety from all requirements of the Alabama Surface Mining Act of 1975?

b. Is the Alabama Surface Mining Commission without jurisdiction to carry out its federally mandated responsibility and act upon any violations of the surface mining laws unless a verified complaint is filed within nine months of the cessation of mining activity?

PARTIES

The caption contains the names of all parties to the proceeding in the court below.

TABLE OF CONTENTS

QUESTIONS PRESENTED..... i

PARTIES iii

TABLE OF CONTENTS iv

TABLE OF AUTHORITIES vi

OPINIONS BELOW 1

JURISDICTION 2

FEDERAL QUESTIONS INVOLVED 4

STATEMENT OF THE CASE 9

REASONS FOR GRANTING THE WRIT ... 14

CONCLUSION 23

CERTIFICATE OF SERVICE 24

APPENDIX A: January 27, 1984
Alabama Supreme Court Order
(Denying Petition for
Certiorari) 1a

APPENDIX B: October 19, 1983
Alabama Court of Civil Appeals
Order
(Denying Application for
rehearing) 2a

APPENDIX C: September 14, 1983
Alabama Court of Civil Appeals
(Appeals Opinion) 3a

APPENDIX D: April 5, 1983
Tuscaloosa County Circuit Court
(Order) 17a

APPENDIX E: March 12, 1981
Alabama Surface Mining Reclamation
Commission
(Findings and Order) 24a

APPENDIX F: Texts of Statutes
cited 31a

TABLE OF AUTHORITIES

CASES

American Casualty Co. v. Commonwealth, 441 A. 2d 1383 (Pa. 1982) 19

National Surety Co. v. First National Bank, 224 Ala. 423, 140 So. 544 (1932) 20

STATUTES

Alabama Surface Mining Reclamation Act of 1975, Ala. Code §9-16-30 et seq.

§9-16-31 17
§9-16-39(g) 16
§9-16-41(a) 10
§9-16-44 19
§9-16-51 16,17,18,19

28 U.S.C. §1257(3) 2

28 U.S.C. §2101(c) 2

Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. §1201 et seq.

§1201 6,14,15,21
§1202 5,14
§1253 14

OPINIONS BELOW

1. The opinion of the Alabama Court of Civil Appeals is reported as Commercial Standard Insurance Company v. Alabama Surface Mining Reclamation Commission, 443 So. 2d 1245 (Ala. Civ. App. 1983), and is reproduced as Appendix C, hereto, pp. 3a, infra.

2. The opinion of the Tuscaloosa County Circuit Court of Alabama is reproduced as Appendix D, hereto, pp.17a infra.

3. The opinion of the Alabama Surface Mining Reclamation Commission is reproduced as Appendix E, hereto, pp. 24a infra.

JURISDICTION

The judgment of the Alabama Court of Civil Appeals was entered September 14, 1983. See Appendix C, hereto, pp. 3a infra.

Petitioner's timely application for rehearing was denied in an order entered October 19, 1983. See Appendix B, hereto pp. 2a infra.

Petitioner's timely application for certiorari to the Alabama Supreme Court was denied in an order entered January 27, 1984. See Appendix A, hereto, pp. 1a infra.

This petition is filed within ninety days of that denial, as permitted by Rule 20.2, 28 U.S.C. §2101(c). Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257(3) which provides for

review of a final judgment rendered by the highest court of a state in which a decision could be had where the validity of a statute of the United States is drawn into question or any right is specially set up or claimed under a United States statute. See Appendix F, hereto, pp. 39a infra.

FEDERAL QUESTIONS

The precise issues litigated at the state court level involved interpretation of enforcement provisions of the state act. These were the provisions relied on by Congress to safeguard the rights created by federal law. While the case involves the interpretation of state law provisions the overriding issues center on the enforcement of federally created rights making federal questions manifest at every stage of the proceeding herein.

The federal act was enacted to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations", to "assist the States in developing and implementing a program

to achieve" those purposes; and "wherever necessary, exercise the full reach of Federal constitutional powers to insure the protection of the public interest through effective control of surface coal mining operations". 30 U.S. C. §1202(a), (g)(m).

Congress specifically declared that the protection of the environment from the adverse effects of coal surface mining was a federal problem. "(S)urface and underground coal mining operations affect interstate commerce, contribute to the economic well-being, security, and general welfare of the Nation and should be conducted in an environmentally sound manner". Congress further found that "the cooperative effort established by this Act is necessary to prevent or mitigate adverse environmental effects

of present and future surface coal mining operations". 30 U.S.C. §1201(j), (k).

The federal act imposes mandatory incorporation of federal standards that protect federal rights into state law. Enforcement of a federal right-protection from the adverse effects of surface coal mining operations-has been entrusted to those states with approved regulatory programs. Congress has defined the evil, prescribed the remedy, but allowed the states to administer the "medicine" through implementation of a consistent state statutory scheme.

Where a federal act imposes mandatory incorporation of federal standards into state law and compels the state to enforce federal rights any litigation arising under such state law must necessarily present federal questions.

Whenever federally created rights are at stake, federal questions must necessarily be involved.

At issue in the present case is whether the state can continue to enforce crucial provisions of the state act which directly affects the ability of the state to protect the federal rights it is charged with enforcing. The action herein involves federal rights granted by a federal statute. Litigation of these issues necessarily involves federal questions in that their resolution hinges on the interpretation of a state statute that enforces federally created remedies. The questions litigated in the state courts below are necessarily federal questions in that their resolution will affect federally created rights and remedies.

The state statute draws its authority from the federal act and must be construed in light of the purposes and remedies declared in the federal act. As such, a federal question is implicit in any action involving an interpretation of such a state statute or a part thereof.

STATEMENT OF THE CASE

On January 12, 1981, Frank Evans and Bob Cleere, Inspectors for the Alabama Surface Mining Reclamation Commission (hereinafter the Commission) filed verified complaints with the Commission alleging violations of the Alabama Surface Mining Reclamation Act of 1975 (hereinafter the State Act), by Hendrix and Lee, Inc., a surface coal mining licensee subject to regulation by the Commission. On the same date, the Director of the Commission issued Citations and Orders to Hendrix and Lee, Inc. Copies were sent to the surety on Hendrix and Lee's reclamation bonds, Commercial Standard Insurance Company, Inc. (hereinafter Commercial Standard), the Appellant.

On January 27, 1981, the Commission

held administrative hearings, addressing the violations against Hendrix and Lee. At the hearing, no one appeared on behalf of Hendrix and Lee, Inc. However, Commercial Standard was represented by counsel. Based upon the failure of any representative of Hendrix and Lee, Inc. to appear, the hearing examiner found that the allegations as to violations of the State Act were admitted. Counsel for Commercial Standard was not allowed to participate in the hearing other than to the extent of objecting on the record that the hearing violated the due process rights of Commercial Standard, and that the Commission had no jurisdiction in the matter due to the fact that the complaints were not filed within the time required by §9-16-41(a) Ala. Code (1975), (hereinafter cited by section number).

On March 12, 1981, the Director issued an order which required Hendrix and Lee, Inc. or any other interested party to file a reclamation timetable within sixty days of the date of the Commission's order outlining the steps to complete reclamation of the affected areas by May 15, 1982. Commercial Standard, as surety, was granted an additional thirty days to file such a timetable. It was further ordered that the failure to file a reclamation timetable within the time limits allowed would result in the surety bonds being declared forfeited and being due and payable to the State. Neither Commercial Standard nor Hendrix and Lee, Inc. submitted a timetable.

Commercial Standard filed a consolidated appeal of the Commission's orders

to the Circuit Court of Jefferson County, Alabama. The case was transferred to the Tuscaloosa County Circuit Court which entered an order affirming the orders of the Commission.

Commercial Standard appealed to the Court of Civil Appeals which on September 14, 1983 reversed and remanded the decision of the Circuit Court holding that the surety was due to be discharged from its obligation on the bonds in the instances complained of and that the orders of the Commission were void and to no effect on the basis that the verified complaints on which the actions were based were not filed within ninety days of the event or events giving rise to the violations complained of as required by the Act.

The Commission's application for

rehearing was overruled without opinion on October 19, 1983. The petition for writ of certiorari to the Court of Civil Appeals was denied without opinion by the Supreme Court of Alabama on January 27, 1984.

REASONS FOR GRANTING THE WRIT

The mandate of federal law, the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. §1201 et seq. (hereinafter the federal act), is to insure that all lands surface mined within the United States be reclaimed. 30 U.S.C. §1202(e).

The federal act initiated a scheme whereby the states would enforce the federally mandated surface mining laws through state procedure. 30 U.S.C. §1253.

The federal act established the right of the people to be free from the adverse effects of surface coal mining operations, 30 U.S.C. §1202 (a). However protection of these rights was entrusted to the states. "(T)he primary governmental responsibility for developing, authorizing, issuing, and

enforcing regulations for surface mining and reclamation operations subject to this Act should rest with the States". 30 U.S.C. §1201(f). The purpose of the Alabama act is to safeguard these federal rights by establishing and enforcing a regulatory scheme that is uniquely suited to the surface coal mining industry of the state. While the instant case involves a challenge to state regulatory statutes, in actuality it is federally created rights that are endangered. The decision as it now stands, frustrates the will of Congress by eviscerating the state remedy that was implemented to carry out the purposes of the federal act.

It was argued in Petitioner's application for writ of certiorari to the Alabama Supreme Court that the Alabama Court of Civil Appeals erred in the result that

was reached. That result obstructs the purpose and design of the federal act by placing a very restrictive interpretation on the State statute which implements the federal law.

The State law contains a provision that complaints brought by the Commission must be filed within ninety days from the event or events giving rise to the complaint. Ala. Code §9-16-51(a). Further, there is a requirement that grading and contouring of surface coal mined lands be accomplished by the operator within six months from the date of completion of mining operations. Ala. Code §9-16-39(g). The Court of Civil Appeals determined that since the Commission had not filed one particular complaint within ninety days from that six month period that the surety company is automatically

discharged. Commercial Standard, supra.

This reasoning completely obliterates the Commission's opportunity to file additional complaints for other violations of law for which the surety would be responsible.

The failure to file a timely complaint does not excuse performance of the reclamation obligation and does not work a discharge of the surety under its bond. The verified complaint procedure is a mechanism for enforcing specific provisions of the State Act against recalcitrant operators. It is a mechanism to insure that the requirements of the State Act are complied with. The verified complaint applies to "operators" under the State Act only. Ala. Code §9-16-51. Ala. Code §9-16-31 defines an "operator" as "the person, firm, cor-

poration, partnership or other entity conducting coal surface mining". Ala. Code §9-16-51 has no application to a surety on an operator's bond. The procedure was never intended to provide either an operator or a surety with an excuse for nonperformance of their respective obligations under the State Act.

If a verified complaint is untimely filed, the result is that no proceedings may be had upon the specific violations alleged in the complaint. It does not mean that the operator is discharged from his reclamation responsibilities under the State Act. The obligations to reclaim are separate and apart from the potential liability of the operator for violating specific provisions of the State Act and the obligation to reclaim is not dependent upon a verified complaint

being initiated to compel reclamation.

The ninety day rule for filing a verified complaint of Ala. Code §9-16-51 (a) has no application to the validity of the suretyship contract. The contract of suretyship is conditioned, both in express terms of the contract and the language of the Act, upon performance of the reclamation obligations imposed by the State Act. §9-16-44(a).

The result reached by the Alabama Court is directly opposite to the only other decision that has considered the issues. In American Casualty Co. v. Commonwealth, 441 A. 2d 1383 (Pa. 1982) the Pennsylvania Commonwealth Court was asked to construe a statute requiring that bond forfeiture actions be commenced within five years of the cessation of mining. The court found that reclamation

was a part of the mining process and that an action on the bond would lie if brought within five years following the completion of reclamation. American Casualty, supra at 1387.

The effect of the restrictive opinion of the Alabama Court of Civil Appeals is to obstruct the intent and purpose of the federal act. The restrictive opinion is also contrary to the surety law. The rule has developed that a contract of suretyship is to be liberally construed in favor of the obligee and against the commercial surety. National Surety Co. v. First National Bank, 224 Ala. 423, 140 So. 544 (1932).

As was argued by Petitioner in its brief to the Supreme Court of Alabama "discharging of a surety on its bonds

because a verified complaint was not timely filed against an operator stands the Reclamation Act on its head and places the monetary gain of a commercial insurer above the protection of the environment and natural resources of the citizens of this State".

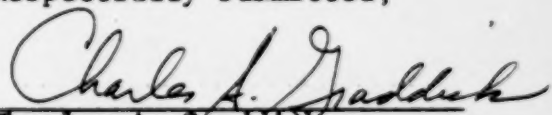
Allowing the state court decision herein to stand will result in the very evil that the federal act was enacted to guard against, namely "destroying or diminishing the utility of land...by impairing natural beauty, by damaging the property of citizens, by creating hazards dangerous to life and property, by degrading the quality of life in local communities, and by counteracting governmental programs and efforts to conserve soil, water and other natural resources". 30 U.S.C. §1201(c).

The Alabama Courts' opinion is contrary to applicable law, inconsistent with opinions of other state courts and obstructs the intent of the federal act.

CONCLUSION

This Court should grant certiorari in this case as it involves important federal questions which materially affect the well-being of the people of the United States.

Respectfully submitted,



Charles A. Graddick
Alabama Attorney General

Assistant Alabama Attorney General

CERTIFICATE OF SERVICE

I, Rosa H. Davis , a member of the Bar of the Supreme Court of the United States, do hereby certify that on this the 20th day of April, 1984, I did serve copies of this petition and the accompanying appendix on Respondent, by placing in the United States Mail, first class, postage prepaid, three copies properly addressed to the counsel of record for Respondent, as follows:

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